

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(ORIGINAL SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPO 120 of 2021

Sk. Jahir & Ors.

vs.

The Kolkata Municipal Corporation &Ors.

&

WPO 121 of 2021

Ansar Ahmed & Ors.

vs.

The Kolkata Municipal Corporation &Ors.

For the Petitioners

: Mr. Srijib Chakraborty,
: Mr. Aditya Mondal,
: Mr. Lalratan Mondal.

For the K.M.C

: Mr. Alok Kr. Ghosh,
: Mr. Gopal Chandra Das,
: Mr. Debhangshu Mondal.

Heard on : 07/12/2023

Judgment on : 04/04/2024

Rai Chattopadhyay,J.

(1) The two writ petitions being No. WPO 120 of 2021 and WPO 121 of 2021, have been heard together and are being adjudicated and disposed of, by dint of this common judgment.

(2) The writ petitioners are aggrieved, due to divergent decisions taken by the Heritage Commission and the

respondent/Kolkata Municipal Corporation, in the matter of declaration of their residence, i.e, 20B, Karl Marx Sarani, as a heritage building. Their further grievance is that, in spite of the Heritage Commission having held such declaration not to be maintainable due to want of adequate evidence, the Kolkata Municipal Corporation subsequently determines the same otherwise, in consonance with its earlier decision. The end result is that the residence of the writ petitioners finds place in the 'Graded List' of heritage buildings, of the respondent/Kolkata Municipal Corporation, against which the petitioners seek relief that the same may be decategorised and delisted, from there. They have sought that the decision of the Kolkata Municipal Corporation, declaring the said premises, as heritage, be set aside. Hence, these writ petitions.

▪ *Factual background of the case :*

(3) The building 20B Karl Marx Sarani, is an old building. The writ petitioners have stated on oath that no property related document with respect to the said premises is available with the respondent Corporation, prior to the year 1875. They have stated the same on the basis of the information furnished to them by the Superintendent of Records, Central Records Department of the respondent Corporation, vide letter dated 22/11/1990 [paragraph 9 of the writ petition & annexure 'p-2']. This being a matter of records, the same appears to have been accepted by the respondent Corporation [vide paragraph 8 of the affidavit-in-opposition].

▪ *How the property devolved upon the writ petitioners :*

(4) The writ petitioners have relied on five deeds of conveyance executed on 04/01/1990, to state that by dint of the said

five deeds of conveyance the respective owners of the property situated at 20B Karl Marx Sarani, sold and transferred the absolute right and title interest with respect to the said property, in favour of the predecessors of the writ petitioners and the other co-owners of them.

▪ Mutation after purchase :

(5) The writ petitioner's application for mutation of the said property after purchase, was however rejected by the respondent Corporation, vide a letter dated 18/02/1991, on the ground that the same could not be mutated, the premises being under acquisition by the State Government for public purpose.

(6) The writ petitioners have stated regarding an order of the civil Court dated 16/05/1991, by dint of which, they say that the respondent Corporation (defendant in that civil suit being Title Suit No 190 of 1991, before the 5th Court of Munsif at Alipore) was directed to record the transfer of title in respect of the suit property in favour of the plaintiffs, that is the predecessors of the writ petitioners, in the municipal assessment book and the appropriate books lying in the office of the municipality (respondent Corporation). It is stated that the respondent Corporation was also directed to sanction building plan for construction of the building by the writ petitioners after mutating the names of the writ petitioners with respect to the said property.

(7) The writ petitioners have mentioned about a letter dated 20/05/1999, issued to them by the respondent Corporation, informing the fact that the names of the writ petitioners have been mutated with respect to the said concerned premises, with effect from 11/05/1999. Mutation certificate dated 28/05/1999, was issued.

(8) Within a very short span of time, another letter dated 23/09/1999 was received by the writ petitioners, from the Assistant Assessor, Assessment Department of the respondent Corporation. By dint of the same the writ petitioners were informed that mutation of their names with respect to the said property in the records of the respondent Corporation has been cancelled by an order dated 19/08/1999 of the Deputy Municipal Commissioner (Revenue – Head Quarters), since the property has been declared as the *heritage building*, being the erstwhile residence of the eminent poet, Michael Madhusudhan Dutta.

(9) This decision and the purported letter as above of the respondent Corporation was challenged by the present writ petitioners by filing W.P. No. 175 (W) of 2008. In the same, by an order dated 25/09/2008, the Court had directed the respondent Corporation to mutate the property, in favour of the predecessors of the writ petitioners. Thus, the mutation of the writ petitioners/predecessors, with respect to the said property was restored by the respondent Corporation, in compliance with the order of the Court. The said decision was communicated vide a letter dated 16/03/2009.

▪ *The building was declared as a heritage building :*

(10) A simultaneous procedure was going on for declaring the building as a *heritage building*. The “*Expert Committee on Heritage Building*” constituted by the Government of West Bengal submitted its report on 02/11/1998, enlisting therein the buildings which were identified and recommended by it to be declared as heritage buildings. The premises number 20B, Karl Marx Sarani found place in the said list, as the residence building of eminent poet Michael Madhusudan Dutta. A committee meeting was held on

01/12/1998, under the chairmanship of the Minister – in – Charge, Department of Home (Police), Government of West Bengal, in which the government decided to accept and send the said report to the respondent Kolkata Municipal Corporation, for their acceptance and taking suitable action towards preservation and conservation of the enlisted buildings, in terms of the Kolkata Municipal Corporation Act 1980. Hence, after obtaining the said report the respondent Corporation published advertisement in the well circulated newspapers on 02/08/1999. The HCC accorded its ascent vide resolution dated 17/04/2000. The Mayor-in-Council approved the decision of HCC as above, on 21/09/2000. The writ petitioners have stated that notice dated 30/08/2001 was sent to the deceased previous owner of the premises, namely Sudhir Kumar Nandan, by the respondent Corporation. All these prompted a writ petition to be filed in Court being W.P.No. 1298 (W) of 2008, which was, however, subsequently withdrawn.

(11) A “*Graded List*” of the heritage buildings was published on 25/02/2009, in which the concerned premises was listed at “*page-83*”. The second writ petition was filed being W.P.No. 636 (W) of 2009. This was ultimately withdrawn with the liberty to be filed afresh, vide order dated 18/09/2013. Mention of this writ petition becomes necessary as the facts declared by the parties in the affidavits filed in that case [that is, W.P.No. 636 (W) of 2009], would bear relevance in the present writ petition too. The same shall be discussed at the later part of this judgment.

(12) The 3rd writ petition is W.P.No.142 (W) of 2014, which was disposed of, by an order dated 11/07/2016. The Court directed the West Bengal Heritage Commission to review and reassess the view taken by the Expert Committee together with the decision of HCC endorsing the recommendation made by the said Expert

Committee. The Court directed that if the decision declaring the concerned premises as a *heritage building* would be found to be incorrect, the Commission would send its finding to the Mayor-in-Council and thereafter to the Corporation, for taking necessary decision as regards this. The Hon'ble Court held that the respondent Kolkata Municipal Corporation would not ordinarily interfere with the decision of the Heritage Commission or otherwise would pass a reasoned order to justify such interference, if any.

(13) According to such directions of this Court, the West Bengal Heritage Commission had decided the matter and communicated it to the Commissioner, Kolkata Municipal Commission, vide letter dated 05/09/2017. A glance to the decision of the West Bengal Heritage Commission, communicated by the said letter dated 05/09/2017 would benefit discussions in this case.

(14) The Heritage Commission writes that to declare a building as heritage on the ground that the eminent poet lived there for a considerable period during his life, it must be established with supportive documents/materials that he actually resided therein. It is further recorded in the said communication dated 05/09/2017, that after interacting with the concerned parties including the representatives of respondent Kolkata Municipal Corporation and having inspected the concerned premises, no such documentary proof could be gathered in support of the fact that the poet had actually lived in the said premises, for a considerable period of his life. The newspaper publication to widely circulate the invitation for anyone from the general public to come forward with any such pertinent information, also went in vain. Therefore, the Heritage Commission decided not to uphold the decision of the HCC, to declare the said premises as a *heritage building*, in absence of any documentary evidence. The Heritage Commission however, proposed for installation

of statue of the poet along with a plaque with the life history of the poet written over there, at a prominent place in the said premises.

(15) Thus again, the ball travelled to the court of the Kolkata Municipal Corporation. In a contempt proceeding before the High Court, disclosure was made about a resolution of HCC dated 11/08/2018. In the same, the HCC had virtually stuck to its earlier decision of declaring the premises concerned as a *heritage building*, on the basis of a fresh report of the historian member of the HCC. The details of the said report shall be discussed later in this judgment. The Mayor-in-Council had also accepted this decision of the HCC. However, vide order dated 08/02/2019, this court directed for filing of compliance report afresh, while declining to accept the report submitted in terms of the decision of the HCC as well as Mayor-in-Council, as mentioned earlier in this paragraph.

(16) The 2nd compliance report was no different than the first one, stating that the decision of HCC and approval to the same by the Mayor-in-Council, for declaring the building as a *heritage building* was approved by the Corporation in its meeting held on 04/10/2018. Thus, ultimately the respondent Corporation has maintained its stand for declaring the said building, as a *heritage building*.

▪ Prayers made in these writ petitions :

(17) On the factual background of the case as stated above, the present writ petitions been moved to pray for the relief that (i) resolution of the HCC dated 11/08/2018 may be directed to be set aside, (ii) approval given to the same by the Mayor-in-Council vide dated 31/08/2018, may be set aside, (iii) decision of the respondent Corporation dated 04/10/2018, accepting and approving the decisions of the HCC and the Mayor-in-Council, to declare the

building as a *heritage building*, may be quashed, (iv) the building 20 B Karl Marx Sarani, Ward No.77, Kolkata-700023, may be directed to be delisted from the list of heritage buildings, prepared by the Special Committee and the 'Graded List' of heritage buildings dated 25/02/2009, of the respondent Corporation.

▪ Arguments on behalf of the writ petitioners :

(18) Mr. Chakraborty appears on behalf of the writ petitioners in these cases. He says that there is no legal and reasonable basis of the decision of the respondent Corporation to declare the premises owned by his clients to be a *heritage building*. Therefore, according to the writ petitioners, such a decision by the respondent Corporation is only whimsical, coercive and arbitrary. According to Mr. Chakraborty, the entire decision making process of the Corporation as above is through the avenue of sheer lawlessness, by brazen violation of the legislative scheme, expressed through the various provisions of applicable statutes. He says that such a decision of the Corporation is an exhibition of gross and outrageous wrongful exercise of power by the same, which is not vested with the Corporation, under the provisions of the statute. He has further stated that regimented efforts of the Corporation by atrociously violating the statutory provisions have ultimately resulted into the decision of declaring the building as heritage, hence it is not maintainable and is liable to be set aside being illegal. Mr. Chakraborty has further argued that the decision is arbitrary, being based on no foundational strong and concrete material. He elaborates that the decision of the authority, which is within the meaning of a 'State' as envisaged in the Constitution of India, should be based on justifiable, concrete foundational resources. If not so, the decision of the respondent authority would be a perversity, null and void, being baseless, unfounded and questionable. He has sought for setting

aside the Corporation's decision, to declare the said premises, as *heritage*.

(19) Mr. Chakraborty has formulated an argument that after promulgation of the West Bengal Heritage Commission Act, 2001, and the West Bengal Heritage Commission coming into operation, the said Commission is the only policy making body, so far as declaration of any building as a *heritage building*, is concerned. According to him, as per the statutory provision, the decision of the Commission would be final, as regards this. Mr. Chakraborty has strongly relied on section 11 of the West Bengal Heritage Commission Act, in support of his submissions as above. Mr. Chakraborty would rely upon the provision under Section 2 (g) of the West Bengal Heritage Commission Act, 2001, which has defined 'local authority'. May the same be extracted below:-

"2. Definitions. - *In this Act, unless the context otherwise requires, -*

(g) "local authority" *means any Municipal Corporation established under any West Bengal Act or Municipality under the West Bengal Municipal Act, 1993 or any Panchayat constituted under the West Bengal Panchayat Act, 1973;"*

(20) He elaborates that according to the said definition, the respondent Kolkata Municipal Corporation would be a 'local authority' under the provisions of the West Bengal Heritage Commission Act, 2001. To explain as to how the local authority would be bound by the decision of the Heritage Commission, under the provisions of the Act of 2001, Mr. Chakraborty has then proceeded to rely on the provision under Section 11 (3) of the said Act of 2001. Section 11 is provided in Chapter III of the said Act which deals with '*powers and functions of commission*'. Section 11 (3) would say as follows:-

“11. Powers and functions of Commission.-

(1)*****

(2)*****

(3)*Notwithstanding anything contained in any other law for the time being in force, no local authority shall take any step for identification, preservation, conservation or restoration of any heritage building, not consistent with the determination or advice of the Commission.”*

(21) By referring to the said provision Mr. Chakraborty has categorically submitted that with reference to declaration of a building as a heritage, the Heritage Commission of the State shall have the ultimate power and authority, in supersession of that of any other body/authority, after promulgation of 2001 Act. He has specifically mentioned about the non-obstante clause appearing in Section 11 (3) of the 2001 Act, which, according to him, has restricted application of provision under any other law for the time being, in case of identification, preservation, conservation or restoration of a heritage building. Mr. Chakraborty has submitted that the provisions of the Kolkata Municipal Corporation Act, 1980, or authority's power granted under the same, therefore, could not be brought into operation, in case of declaring the writ petitioner's abode as a *heritage building*. He would further refer to Section 16 of the 2001 Act, to say that the same has mandatorily provided for acceptance and compliance of the advice of the Commission by the State Government or the local authority, in this case the respondent Kolkata Municipal Corporation. Whether the provisions are actually mandatory in nature or not has to be confirmed with the tests enumerated by the Hon'ble Supreme Court, he says. On this he has relied on the Supreme Court's judgment, i.e, ***P.T. Rajan vs. T.P.M. Sahir &Ors.*** reported in **(2003) 8 SCC 498**.

(22) Therefore, according to Mr. Chakraborty, after promulgation of the Act of 2001, neither the HCC or the Mayor-in-Council or the Corporation would have any power whatsoever to act beyond scope of views and advice of the West Bengal Heritage Commission Act, 2001, in case of identification of a heritage building. By referring to the relevant documents available in record particularly the letter of the Secretary, West Bengal Heritage Commission dated 05.09.2017, written to the Commissioner of respondent Corporation (as discussed above), he says that the respondent Corporation under the said provisions of law as discussed above, would not have any authority or jurisdiction to act independently, beyond the observation of the Heritage Commission, as stated therein. Since the ultimate decision of the respondent Corporation is not based on the advice provided by the Heritage Commission by dint of letter dated 05.09.2017, according to Mr. Chakraborty, the same would be illegal and liable to be set aside.

(23) The other point taken by Mr. Chakraborty on behalf of the writ petitioners is regarding non-maintainability and perversity of the process undertaken by the respondent Corporation to come to a finding regarding heritage status of the petitioner's residence. He says that the basis of the decision of the respondent Corporation regarding a heritage status of the building for the reason of the poet Madhusudan Dutta having resided therein for a considerable period of time, has been an article titled 'Madhu-Smriti' published in the monthly Magazine namely Bharatbarsha, 2nd Year, 2nd Volume, issue no. 5, Boishakh 1322, Bangabdo, equivalent to 1950 AD. That was a series written by one Shri Nagendranath Som on the poet, which was later on published in the form of a book namely 'Madhu-Smriti' by Gurudas Chattopadhyay. Another monthly Magazine article namely 'Rangalal' written in the Magazine 'Manasi o Marmabani' (20th year,

1st Volume, issue no. 3, Boishakh 1335, Bangabdo, equivalent to 1928 AD) has been mentioned about. The series was written by one Shri Manmatha Ghosh. This was also published as a book namely 'Rangalal' written by Gurudas Chattopadhyay. It is stated that in those two books the concerned premises was said to have been identified as the residence of the poet during his childhood and early adulthood years. Mr. Chakraborty has stated that these two books were the resources on the basis of which the Corporation had initially declared the building as a heritage building. However, he says that the Corporation could not have done so in so far as the article mentioned in those books would not be the authentic material to come to the conclusion regarding the poet's residing in the said building as those are not authenticated and supported by any valid and acceptable proof of the said fact, from the records of the respondent Corporation. He does not fail to point out that the Corporation is the custodian of such record of a resident citizen of the area within its jurisdiction. Therefore, an averment made in a book without being authenticated by a valid proof thereof could not have been relied on by the Corporation while declaring the building as heritage which he says, in turn has jeopardised his client's constitutional right to property.

(24) He further says that at a later period in the contempt preceding, the respondent Corporation has again come up with a report, similarly unauthenticated and unsupported. The second report as above filed by the respondent Corporation before the contempt Court has been based on the other two books of different writers, that is a Memoir namely 'Ramtanu Lahiri O Tatkalin Banga Samaj' written by Shibnath Shastri, wherein it was mentioned that Madhusudan Dutta resided in the said house for a substantial period of his student life. Anxiously Mr. Chakraborty further pointed out that

the 'Wikipedia' report has been based on this time, by the respondent Corporation in support of its decision. So far as the Wikipedia report is concerned, Mr. Chakraborty has submitted that the Wikipedia is an editable virtual version of information and cannot be relied on as an authentic evidence of any fact mentioned therein. He relies on the judgment of the Hon'ble Apex Court on this that is reported in **(2011) 4 SCC 85 (T.V. Venugopal vs. Ushodaya Enterprises Limited & Anr.)**. He says that the respondent Corporation has come up with more infirm and derogatory pieces of so called evidence for the second time in Court to back up its illegal decision. It has also been mentioned that the Corporation or previous to it, the Mayor-in-Council or the HCC, as the case may be, has failed to apply mind and scrutinize the proposal of the Expert Committee, for which they were duty bound under the Act, to do.

(25) Finally, Mr. Chakraborty has submitted that the Court by dint of order dated 08.02.2019, directed the respondent Corporation for reconsideration of the issue. However, the Corporation with ulterior and mala fide motive did not reconsider the same but had come up with the same decision under the veil of differently named similar kind of resources. He says that the same would render the respondent Corporation to be the contemnor thereby wilfully and deliberately disobeying to comply with the Court's direction. He says that the respondent Corporation would also be liable to be issued with a contempt notice for this. On this he has relied on a judgment of this Court reported in **(1993) 2 CHN 282 (Jiban Kumar Banerjee &Anr. vs. The State of West Bengal &Ors.)**. To sum up Mr. Chakraborty has submitted that the decision of the Corporation declaring the premises as a *heritage building*, has been illegal, being in contravention with the provisions of the West Bengal Heritage Commission Act, 2001 and also that the decision is

ineligible to be accepted as just fair and proper, in view of its baselessness, it having been based on not any authentic and cogent material and gross non application of mind by the respondent authority. Thus, on these arguments he has sought for adequate relief for the writ petitioners, in terms of their prayer as mentioned above.

▪ Arguments on behalf of the respondent/ Corporation :

(26) Mr. Ghosh is representing the Kolkata Municipal Corporation. He would be supporting the decision of the Corporation and state as follows. At the first instance Mr. Ghosh has mentioned that the Heritage Commission as established vide the West Bengal Heritage Commission Act, 2001, is an advisory body, established for the purpose of providing advice to the Corporation relating to the heritage buildings. Mr. Ghosh would also rely on Section 11 of the Act of 2001. By relying on the same, he submits that as per Section 11 (1) the Commission would be providing advice to any matter under reference, sent to it by any local authority, relating to identification, restoration and preservation of any heritage building. He says further that according to Section 11 (2), which has enumerated several advisory functions of the said Commission, would show that the functions of the Commission as envisaged under the said law is principally advisory in nature. According to Mr. Ghosh in such view of the fact the powers and functions bestowed upon the Corporation in terms of Section 425A to 425P of the Kolkata Municipal Act, 1980, would remain unaffected, even after promulgation of 2001 Act. By referring to the Court's order dated 11.07.2016, Mr. Ghosh would say that such power of the HCC/Mayor-in-Council and/or the Corporation has also been upheld by the Court. He says that since the directions of the Court in the said order dated 11.07.2016 upon the HCC of the Corporation has not been challenged by the writ

petitioners, the writ petitioners would now be precluded from raising any doubt or question as regards the authority or power of the Corporation with respect to declaring the concerned building as a heritage property.

(27) Mr. Ghosh would further submit that such advisory functions of the Heritage Commission are subject to acceptance by the Corporation or its wings, upon exercise of discretion regarding its acceptability. According to Mr. Ghosh neither the West Bengal Heritage Commission Act, 2001, nor the Kolkata Municipal Corporation Act, 1980, would provide to restrain the Corporation, to exercise its discretion as such, regarding declaring a property as heritage. Therefore, the Corporation, he says, even after promulgation of 2001 Act, possesses the rights and authority in terms of Chapter XXIII A of the Kolkata Municipal Corporation Act, 1980. He says further that the impugned action of the Corporation is only in terms of such power and authority granted by the statute and thus he says that the same has been properly exercised in due observance of statutory formalities and principles of natural justice. He says that therefore there would not be any ground to interfere into the decision of the respondent Corporation. Mr. Ghosh says that the Heritage Commission would not identify a heritage property as a matter of rule but an advisory body would only provide advice regarding its admissibility as a heritage property. The power for identification lies with HCC, in terms of the statutory provision. Mr. Ghosh would further say that there has been specifically defined procedure under the Kolkata Municipal Corporation Act, 1980 to meet the object of the Act regarding identification, conservation and preservation of the heritage building. Section 425 D would be a part of the same where under Sub-section 2 Clause (f) a historian has been included in the HCC as a member to facilitate with the historical background and

data regarding any building for the purpose of its inclusion in the grade of a heritage building. Therefore, according to Mr. Ghosh, the report of the historian could not be thrown away on the pretext of the same having no supporting data. He says that on the contrary the historical events would only be justified by the research and development made by the historian member of the HCC. Mr. Ghosh says that the historian member has collected data from the books named above with the picture of the concerned residential building. The historical value of the same would be having from the materials as above, even though the same may not be backed by any particular material from the other department of the respondent Corporation. Mr. Ghosh would submit that it is part of history and that is why eligible to be bestowed with the status of a heritage building. The Corporation as an institution may not possess the documents as old as the age of the building. But that shall not *ipso facto* be the sufficient ground not to take into reckoning the historical research of the events and its results. Mr. Ghosh has drawn attention of the Court to the letter of the Secretary, West Bengal Heritage Commission, dated 05.09.2017 to the Commissioner of the respondent Corporation. He says that even after recording its finding regarding non-availability of any documentary proof of the poet residing in the said property the Heritage Commission has suggested for putting up statues as well as plaque within the said premises. According to Mr. Ghosh this is a result of sheer indecisiveness of the Heritage Commission regarding the actual status of the building. The doubtful mind of the Commission is evident. Therefore, he says, that this would not be an acceptable piece of advice from the Heritage Commission. Mr. Ghosh would further submit that since the Corporation would have authority to exercise discretion either to accept or to reject. The advice of the Heritage Commission, in view of the vagueness of the advice of the Commission by dint of the said

letter dated 05.09.2017, the Corporation decided not to accept that advice while making decision. According to Mr. Ghosh there is no irregularity with respect to the said decision of the respondent Corporation, much less than any illegality or arbitrariness of such a decision. Mr. Ghosh has not failed to mention that though the decision of the Corporation based on the disclosed facts of the books as above are disputed by the writ petitioners, the facts as disclosed in the said books are not however, disputed.

(28) Mr. Ghosh would submit that this is not a case of availability of 'no evidence' but may be at best stretch to be a case of availability of 'insufficient evidence'. He points out that the facts/evidence revealed through books as mentioned above has not been disputed by the writ petitioner and thus there is no impediment to accept those to be the available evidence on the basis of which the decision of the Corporation as an identifying body of the heritage building could validly be based. According to Mr. Ghosh the same would be sufficient in the present case for the Corporation to take a decision on the same to declare the concerned building as a heritage building. Thus, according to him, the decision of the Corporation could not be followed on any ground whatsoever and the writ petition on the contrary would be liable to be dismissed. Mr. Ghosh has relied on a judgment of this Court reported in **2013 (3) CLJ (Cal) 561 (Selvel Advertising Pvt. Ltd &Anr. vs. Kolkata Municipal Corporation &Ors.)**

(29) The West Bengal Heritage Commission Act, has come into effect in the year 2001, with the following scope and purpose;

*“ An Act to provide for the establishment of a Heritage Commission in the State of West Bengal, for the purpose of identifying heritage buildings, monuments, precincts and sites, and for measures for their restoration and preservation.
Whereas it is expedient to provide for the establishment of a Heritage Commission in the State of West Bengal for the purpose*

of identifying Heritage Buildings, monuments, precincts and sites, and for measures for their restoration and preservation; It is here by enacted in the Fifty-second Year of the Republic of India, by the Legislature of West Bengal, as follows: –

(30) Before that, in the year 1997, the Calcutta Municipal Corporation (Amendment) Act, 1997, came into operation, to incorporate Chapter XXIIIA thereof, which provides for “Preservation and Conservation of Heritage Buildings”. It includes sections 425A to 425P of the said Act.

(31) Apparently it would be and as has been submitted too on behalf of the writ petitioners, that after promulgation of the West Bengal Heritage Commission Act, 2001, the authorities under the Kolkata Municipal Corporation Act 1980, under Chapter XXIIIA , would become only the confirming authorities, so as to the finding and advice of the Heritage Commission, with respect to identification of a heritage building. The provisions under section 11(3) of the West Bengal Heritage Commission Act, 2001, has been strongly relied on by the petitioners, in this regards. It has been submitted that according to section 11(3), of the Act of 2001, irrespective of any provision in any other law, the local authority shall not take any step towards identification, preservation, conservation, or restoration of any heritage building, which is not consistent with the determination or advice of the commission, constituted under the said act of 2001.

(32) Whether this provision alone would determine the extent of power and authority of the HCC, constituted under the Kolkata Municipal Commission Act, 1980, or not? In other words, whether the provision under section 11(3) of Act of 2001 alone would make the authorities constituted under the Act of 1980, as redundant so far as the power for identification, preservation, conservation or restoration of a heritage building is concerned. In the considered

opinion of this Court, the same would not, particularly in view of the specific provisions under section 12 and 16 of the Act of 2001. Let those provisions be extracted, as herein below:-

“12. Appeal to the State Government in certain cases. –

If any local authority is aggrieved by any advice of the Commission in respect of any building operation, engineering operation or development proposal referred to the Commission under sub-section (1) of section 11, such local authority may, within sixty days from the date of advice by the Commission, prefer an appeal to the State Government, and the State Government may pass such order thereon as it deems fit.”

And

“16. State Government and local authority to accept, and to take action in accordance with the advice of the Commission --

(1) Subject to the other provisions of this Act, the State Government and every local authority shall accept every advice of the Commission to that Government or the local authority, as the case may be, and shall take action for prompt and effective implementation of such advice.

(2) The State Government may, for the purposes of sub-section (1), give such directions to a local authority as it may deem fit and, thereupon, such local authority shall act according to the directions as aforesaid.”

(33) The power of local authority has not been made to extinguish by the legislature, while promulgating the Act of 2001. Section 13 of the said Act would also be worth mentioning, which is as follows:

“13. Power of the State Government to revise decision in certain cases. -- *Nothing contained in this act shall preclude the State government from calling for, and examining, on its own motion, if that government considers it necessary so to do in the public interest, any case of advice by the commission under sub-section (1) of section 11 and passing such order thereon as it thinks fit;*

provided that no such order shall be made prejudicially affecting any local authority, except after giving it an opportunity of making a representation in the matter.”

(34) Issue here relates with the very identification of the concerned building and the issue has been covered under section 11(1) of the Act of 2001. Therefore, the local authority, upon being aggrieved by any decision of the Commission, is authorized to appeal before the State Government, under section 12 of the 2001 Act. An advice of a Commission can also be taken under scrutiny of the State Government, as per the provisions under section 13 of the said Act. What section 16 of the said act says is that, subject to these provisions as mentioned in sections 12 or 13, the advice of the Commission would be binding on the local authority or the State Government, as the case may be. In such view of the provisions of law, the arguments advanced on behalf of the writ petitioner that after promulgation of 2001 Act, the provisions of the Kolkata Municipal Act, 1980, with respect to the subject matter of *heritage buildings*, would only be dead letters, cannot be said to be an appropriate proposition. The legislature, according to its own wisdom, has promulgated for simultaneous functioning of the organs created under both of the statutes, as mentioned above. That, the respondent Corporation could not have held, beyond the determination or advice of the Commission, does not inspire confidence insofar as the statutory provision is sufficiently eloquent regarding the authority of the Corporation, to apply its mind to the said advice and form an opinion which may match or differ with that of the Commission. Therefore, is the provision of appeal under Section 12 of the said Act. In that case, the statute has given scope to the Corporation to take certain specified steps, as enumerated therein.

(35) Here, it is necessary to just have a recapitulation, regarding certain facts in this case. The concerned building was declared as a heritage building, on the basis of information available in the books namely “Madhu-Smiriti” and “Rangalal”. The Court

directed for revisiting the decision of the Kolkata Municipal Corporation by the West Bengal Heritage Commission. The Commission, however, found no authenticity of the ground, for which the building was declared as a heritage building. The Commission said that there would not be any sufficient document available to show that the poet lived in the said building. The commission did not accept the information regarding that, as illustrated in the non-fiction books. The decision of the respondent Corporation of declaring the building as a heritage building, was discarded by the Commission. Instead, it recommended that a plaque and statute be erected, at the premises.

(36) The respondent Corporation, by not acting on such advice of the Commission, had stuck to its earlier decision. This time, it had referred to yet another book, i.e, “Ramtanu Lahiri O Tatkalin Banga Samaj” and information thereof along with the data published in ‘Wikipedia’. Admittedly, so far as the building is concerned, its records are not available for the period, prior to the year 1875.

(37) The historic designation of individual properties is aimed at managing historical buildings, which is primarily regarded as “values” to be defended and preserved for future generations. It would cast several burdens upon the property owner, in terms of its maintenance, preservation, conservation, transferability and addition or alteration. Therefore, at one hand, monuments with historical value are required to be identified and preserved, on the other, it is also to be ascertained that such identification is based on only the authenticated, full proof records of the events, on the basis of which, the property is desired to be earmarked as heritage. The present is not a case of architectural eminence of the building, which would have been visible with the bare eyes. Its historical importance is related

with the life of an illustrious personality. As claimed, poet Michael Madhusudan Datta, had resided at the said house.

(38) So far as the identification of a building as Heritage Building is concerned, let the provision under the respective statutes, be examined. According to Section 11 Sub-section 1 to the 2001 Act, the Corporation is to refer anything relating to identification of any Heritage Building to the Commission, for advice. It has earlier been discussed that the advice of the Commission should generally be acceptable to the Corporation or else under Section 12 of the said Act, a provision of appeal to the State Government by the Corporation in case of its being dissatisfied with such advice, has been made.

(39) On the other hand, Section 425B of the 1980 Act has provided power of the Corporation to declare a building as a Heritage Building. The same has provided that the Corporation would take into account the recommendation of the HCC and the Mayor-in-Council and also that formulation of an opinion by the same would be necessary, that a building is required to be preserved and conserved for historical, architectural, environmental or ecological purposes. According to Section 425B the Corporation only shall have the power to declare a building as a Heritage Building subject to fulfilment of the conditions as specified in the Act. The Commission under the 2001 Act, however, shall not have any such power to declare a building as a Heritage Building.

(40) Be that as it may, in case of the writ petitioners, we have the decision of the respondent Corporation as well as the decision of the State Heritage Commission in vogue, but contradictory to each other. The Corporation by relying on to non-fiction books namely, “Madhu-Smriti” and “Rangalal” and also by relying on the recommendation of the Expert committee, subsequently approved by the HCC and the Mayor-in-Council has declared the concerned

premises as a Heritage Building. Later on, it has taken into its sweep another book namely “Ramtanu Lahiri O Tatkalin Banga Samaj” and ‘Wikipedia’ information, to bolster its such decision. The issues were taken into consideration by the Commission pursuant to a Court’s order, when the Commission found that in absence of any documentary proof as to the fact of the poet residing in the said premises, a declaration as regards the said premises could not have been made. The writ petitioners are sailing in the same boat, with the Commission as regards the opinion, as above, whereas the Corporation reiterated its earlier decision on the basis of another non-fiction namely, “Ramtanu Lahiri O Tatkalin Banga Samaj” and the information available in Wikipedia. Information available in Wikipedia being open ended and editable in character could not have been relied on, as a piece of evidence upon which a decision could have been founded by the authorities. In this regard the law is settled in the manner as above, by dint of the observation of the Supreme Court in ***T.V. Venugopal (supra)*** in case. So far as the information available from the books as named above, this Court is of the opinion that the data relating to historical research, to support the finding of the writer therein, is not available. The bibliography regarding the data on which the writers might have elaborated about the fact of the poet residing at the relevant point of time, in the said premises, is not available. Thus, the information available from the said books cannot be accepted to be a result of research oriented fact finding works. Instead, the Court is constrained to note that the respondent Corporation would not possess any relevant document regarding the concerned premises prior to the period of 1875.

The respondent Corporation could have filed an appeal under Section 12 of the West Bengal Heritage Commission Act, 2001, if it was aggrieved of the order of the Commission dated 05.09.2017.

Instead, the respondent has proceeded to reiterate its earlier decision by mentioning some other resources of similar kind. Thus, in considered opinion of this Court the same has failed to exercise power vested under law and directed itself to take a step which is not in conformity with the law.

(41) As discussed earlier, since declaration of Heritage status of a building would make the owners thereof liable to various obligations under the law including restricted usage of the property and embargo for sale of the same etc., the concerned authority, before declaring a building a Heritage Building, should have been most cautious as to the availability of appropriate data, to form its decision on the same. Authenticity of the available data would be an imperative factor, unavoidable by the respondent Corporation, while declaring a building as heritage. Any fact finding research would depend upon collection of such authentic data. Such data and not the guess work on the basis of some hearsay or folk lore, could have justified the decision of the respondent Corporation for declaring the premises as a Heritage Building. Unfortunately this Court does not find any such details about the fact of the poet living in the said premises for a substantive period of his life. Mr. Ghosh has suggested that as a historical event, the information provided in the said non-fictions would be sufficient for satisfaction of the concerned authorities and it has done accordingly. This however, does not inspire confidence, on the grounds as discussed above.

(42) This Court is of the opinion that pursuant to the provisions under Section 425B of the 1980 Act, the respondent Corporation ought have considered this aspect while forming opinion about whether or not to accept the recommendation of the Expert Committee duly approved by HCC and Mayor-in-Council and to declare the concerned premises as a Heritage Building. Such kind of

application of mind by the respondent Corporation before accepting the recommendation is not evident from the records. Mere acceptance of the recommendation of the Expert Committee/HCC/Mayor-in-Council in this regard is not what the Kolkata Municipal Corporation Act, 1980 says in Section 425B thereof. According to the wisdom of the legislature, there may have been recommendations, and/or advice by the Heritage Commission (after promulgation of the Act of 2001), or any other source, whatsoever. According to Section 425B of the 1980 Act, the Corporation is to form opinion regarding a building to be required to be preserved and conserved. In this case, on both the occasions, when the building was declared as a Heritage Building for the first time and later on when the Corporation reassessed such identification, pursuant to the Court's order, no sufficient material is brought on record that the decision of the Corporation has been in accordance with the provision under Section 425B as stated above. In other words, this respondent is unable to showcase any material that independent application of mind by it, than merely endorsing the recommendations, has ever enriched its decision, to declare petitioner's residence, as heritage. This appears to be in violation of Section 425B of the Act of 1980.

(43) So far as the petitioners are concerned, the property in question is owned by them by way of inheritance. They own and possess the same and the said fact is admitted by the respondents in this case. Therefore, but for a justifiable reason, based on sound materials to support the same and without the due process of law, a lawful owner of the property could not have been deprived from enjoying right over the same. The act of the respondent corporation by declaring the said property as a heritage building is found to have been done in gross violation of the statutory provisions as well as unreasonably, without support of any tangible material.

(44) For the reason as discussed, above the decision of the respondent Corporation declaring the concerned premises as a Heritage Building cannot be sustained, being baseless and illegal. It is an unreasonable exercise of power, not judiciously but only arbitrarily.

(45) The writ petitions being no. WPO 120 of 2021 and WPO 121 of 2021 are allowed. Decision of the respondent/Corporation to declare the premises No. 20B, Karl Marx Sarani, as a heritage building, is set aside. The respondent Corporation is directed to immediately delist the premises No. 20B, Karl Marx Sarani, Kolkata – 700023, from the '*Graded List*' of Heritage Building.

(45) The writ petitions are disposed of along with application pending, if any.

(46) Urgent Photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay, J.)